

Subcommittee on Courts, Intellectual Property, and the Internet.

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Internet

Testimony of Molly Metz

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Chairman Johnson, Ranking Member Issa, and member of this Subcommittee, thank you for the opportunity to testify today. My name is Molly Metz, I am a former 5-time world jump rope champion. I own the company JumpNrope, a jump rope content and manufacturing business. I have to date conducted almost 900 jump rope seminars across the world for athletes and coaches in CrossFit. My jump rope manufacturing business is based in Louisville, CO where of which all our jump rope parts are sourced in the USA and all our jump ropes are made by hand. My husband and I also own a CrossFit Gym.

I am the first jump roper to invent and patent a jump rope. My precision-based speed handles changed the world of jump ropes in the fitness industry. World and Guinness records have been broken using my handle technology. I received my patents in 2010 and in 2012. I was so proud of this. The cover of the patents that were granted to me by the United States of America reads;

“Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States of America or importing the invention into the United States of America for the term set forth below, subject to the payment of the maintenance fees as provided by the law.”

From the moment my patent was pending the world was starting to infringe on my jump rope. I realized at that moment “I must have invented something really good, companies are stealing it”. I knew no matter what fight was ahead of me, I felt “protected” because I took the necessary steps and secured my patents.

I, Molly Metz was granted the right to my invention and could stop, work with, or exclude others from selling my product.

I would soon learn that taking the appropriate steps to obtain my patent(s) was no grant to exclude others from making my invention. I spent over \$25,000 to comply with all the requirements of the USPTO and would learn that what I thought was my “right” to fight for my invention would cost me everything, once the USPTO unilaterally broke their promise by revoking my patent at the PTAB.

Good ideas get stolen

In 2011/2012 I began contacting online web shops who were infringing on my patent. Contacting smaller companies was positive news. I was able to explain to them that I held the patent to the technology, they understood. I was able to start manufacturing for some of these companies or they just stopped selling my product.

At that time there was a rumor that Rogue Fitness was looking for the technology and wanted to offer this jump rope to their consumers. I contacted the owner, Bill Henninger and let him know that I was the inventor and patent owner of the jump rope technology that he was looking for. Through email he explained that he was excited and eager to work with me and did indeed want to license and manufacture my technology. After a few emails and calls we worked on aligning and finalizing a deal. Bill seemed to be getting eager and had let me know that he had containers of jump ropes already heading over from China (with my technology). I didn't like that he already has the wheels in motion AND he had sourced my invention from China.

Communications went dark. A few months passed and one day I received a social media alert – it was the new Rogue SR-1 Jump Rope release announcement – the rope was made with my technology! I contacted Bill to ask what was going on. His response was “Talk to my attorney”.

Simultaneous to receiving this email I was opening a 10,000 square foot jump rope gym for kids and CrossFit Gym in Colorado – the first Jump Rope Gym in the USA! I was coach to the largest jump rope team in the nation and running jump rope kids programs throughout the state. My renovations to my new gym exceeded \$250,000, I was using all my cash and loans to create this gym.

To stand up to Rogue I knew I needed money, which I didn't have. I had to wait.

For the next 4-years I watched Rogue grow their portfolio of jump ropes, adding the fittest male and female CrossFit athletes in the world's names to their jump ropes – all with my technology. My consumer-to-consumer business suffered because of this.

Watching companies thrive off your invention can take a toll on your body and mind. Not only is it hard to watch your business suffer, but it's also the lack of having a voice in the matter that was making me sick.

I knew I needed to fight my infringers. I knew I had to free up my time and finances to do this. In 2017, with the heaviest of hearts, I made the decision to stop coaching and working with kids. I closed my gym so I could fight.

Starting to fight

For two years I worked with my attorney to stop infringers. We started with smaller businesses and amazon retailers from infringing on my patents. It was working! We established a few working licensing agreements and even shut down imports from China. With the success under our belts, we confidently served Rogue for infringement in the fall of 2018. The day we did this I told myself I was all in. I waited since 2012 for this moment to fight.

When we served Rogue, I learned that I was required to have counsel in Ohio where Rogue HQ is located. We followed the rules which meant I acquired more counsel. Our case was brought to the Judge, and I soon was told that Rogue had requested an IPR. I had no idea what that meant. Despite my opposition, the Ohio Judge granted their motion to stay my infringement case while the USPTO considered revoking my patent on the basis of Rogue's allegation my claimed invention was obvious.

My lawyers explained to me at the time that the PTAB was a different set of judges that would be reviewing the case, however the case now was about the validity of my patents and not infringement. Why was the validity of my patents a topic? I spent good money and spent years with my patent attorney on receiving my valid patents. Aren't they good/valid patents? What was happening?

I was then told that I now had to acquire an "expert" that needed to review the prior art that Rogue was presenting to the court that was perceivably showing that my patents were invalid. This cost nearly \$100,000.

I was reviewing the prior art that Rogue provided to the court, doing my best to learn about patent law. I was told that Rogue was providing prior art under the rule 103 for obviousness. With 103 you then must have a reason to combine the art. Rogue used a jump rope patent from the 1970's and showed a problem to this rope which was that the rope wound upon itself when in use. They showed that you needed the art from 1908 – a swivel system to "fix" this problem.

I scratched my head to this. Any common person knows that a jump rope with a cord and two handles that allows the rope to spin freely in the handle will not wind upon itself. Further, if a jump rope has a bearing inside of the handle the rope/cord itself will not wind upon itself- which this 1970's artwork had. It shouldn't take an "expert" to understand this.

If my patent solved a problem of winding in this artwork and the combination of the 1908 patent helped to solve this problem, that suggests that my invention is the FIRST jump rope to NOT wind on itself.....

I have won 5-world championships with a ton of different jump ropes, of which did not wind upon themselves. How was anyone, especially a panel of highly technical judges going to believe how absurd this prior art/reason to combine theory was accurate? Besides, I didn't invent my jump rope technology with the reason to "fix winding", winding was not an issue in jump ropes. My invention is very precise and particular to speed and power jumping.

I found this presentation of 103 obviousness to be absurd and a waste of everyone's time. I also knew the PTAB judges will see right through this.

Our PTAB hearing was scheduled during COVID, so we did not get our hearing in person but rather through a Zoom Call. I was also told that there were "rules" with the PTAB, things we cannot use, say, or bring. We were allotted only 20 minutes for an oral argument.

This infringement case was the biggest experience both financially and emotionally that I had ever signed up for. This was my life's work and my only patents that I was fighting for.

I couldn't believe that my case shifted gears as a burden to me to fight the validity of my patents and I have now spent over \$200,000 and all I am getting is a twenty-minute Zoom Call?

During the hearing the panel of judges did question Rogue regarding the issue of winding and where the "issue" was referenced in their packet. Rogues' counsel couldn't find this "issue" in their docket of papers. The attorney for Rogue then started to fumble nervously through his papers and couldn't give a clear answer as to where it was. *Because it isn't in there. Instead, he then proceeded to wave his hands around his body showing that if the hands of a person were to point up the sky and down around again that this motion would create "winding" to the jump rope. I knew at that point that Rogue's attempt to invalidate my patents was phony and the panel of highly technical judges was on to them.

All we had to do was wait a few months for the PTAB's decision to be told that my patents were indeed valid.

Several months later into 2019 we received the PTAB's decision that my patents were invalid... INVALID?

I was dumbfounded. How did a few pieces of art and a bogus reason to combine just invalidate my patents?

My attorneys were shocked. Something was wrong.

Taking a closer look to this we found that the standards used in my case by the panel of PTAB judges would invalidate ANY patent, because every invention solves a problem. A legal reason to combine should require evidence, not merely conjecture.

EVERY invention solves a problem. My patents solved a problem. I combined things that already existed to make them do something new and better. I thought this is what invention is. What Thomas Edison, Nicola Tesla and the Wright Brothers did before me.

The PTAB invalidated my patents because, in hindsight, a combination of pieces already existed that an inventor could put together to do what I did.

This is absolutely maddening.

The PTAB broke the law. My attorney's told me "could have been done" is not the right obviousness standard – it is instead "would have been done". No one proved my invention "would have been done", only that "it could have been".

This means that they took the reason to combine the two patents as truth and ignored the other advantages that the examiner recognized rendered my claims NOT obvious. There was no use of perceived reasons, nor did they use evidence to determine this.

How many other patents have been invalidated under these standards?

I have since learned that only 16% of patents are considered valid after completing one or more IPRs at the PTAB.

We appealed our case to the Federal Circuit Court. There were more rules with how we had to appeal, what we could appeal. It was infuriating. I spent the next several months in a dark hole. I was confused and angry. More money, more time.

I kept going through my head from the beginning. I thought about the events leading up to this moment. We sued Rogue for infringement. They were the ones that stole my idea and sold millions of jump ropes. I went into this with the understanding that my patent was my right to *exclude others from making, using, offering for sale, or selling the invention*.

In November of 2021 I flew to DC to attend my appeal hearing. I wasn't allowed to enter the court but waited outside the building for my attorney. I knew the

judges in the Federal Circuit would read our appeal and understand that what happened at the PTAB was a mistake. Three days after our hearing we received an email from the court with a Ruling on our case. The ruling was a one-sentence ruling "AFFIRMED Fed. Cir. Rule 36".

I asked my attorney what happened? What does this mean? What is next? Why didn't the Federal Circuit spend time with this and read our appeal and understand that the standards used were wrong, what happened?

My attorney explained that Rule 36 was an un-appealable ruling. No discussions could be made. We were done.

My leap to fight "goliath", Rogue, has cost me everything. If someone would have told me when I received my patents that "Molly, there is an 84% chance that your patents are invalid if you fight a big business on infringement". I would have done things differently.

I would not have served Rogue with infringement with these odds, who would?

I believe innovation is the backbone to a country. It is a magical experience to be an inventor. We use our brains to solve problems and it collectively brings our country together to create jobs and to inspire growth.

With my experience I am angry, confused and my belief in the US patent system is soured.

To this day I believe my patents are valid.

I believe the PTAB is ruining innovation and inventors like me.

I refuse to be a victim of what happened to me and to accept my Rule 36 affirmation which to me says "you lose go away".

I believe my story is to be told to everyone to show that there is a big problem, and it needs to be fixed.

Is filing for a patent a death sentence?

I invented a game changing jump rope in 2008. I followed the rules, I paid my money, I received my patents. Hundreds of companies stole my invention and made a lot of money off my idea.

Obtaining a patent has been the most expensive and most embarrassing event of my life. I feel cheated by our system.

For the last 10 years I have been claiming the title of “inventor” and sharing with the world that I have two patents. I have collected money for license agreements on these patents. I feel wrong for doing that.

I watched the 2011 C-SPAN discussion on the American Invents Act. I thought it was wise to go back in time so I could learn about why this Bill introduced and how the PTAB was going to “benefit” inventors.

The benefit of the PTAB was to alleviate time and money that was being spent on litigation in the District Court by phony patent holders. Evidentially there are inventors or patent trolls taking advantage of the system and then suing larger businesses for patent infringement.

How were the District Court Judges to know what patents were phony or not to send to the PTAB? What was the screening process? I am not a patent troll, nor do I feel I have a phony patent that is not deserving of a trial with a jury. Why was my patent sent to the PTAB?

One member of Congress also explained that the USPTO office of examiners was overloaded and creating bad patents.

Was I one of those “bad” patents? Why did the USPTO grant me a “bad” patent? Why didn’t anyone notify me with a letter stating, “your patent was not properly examined, we gave you a patent anyways”, “if you try to enforce your patent there is a good chance your patents will prove to be invalid”.

Or was my patent valid? Did my valid patent get sent to IPR and was then subjected to a legal system that is designed to invalidate patents? Was there a screening process at the district level that was incorrect for my valid patent? Does every large business in the world know that when they show a combination of prior art that solves a problem to the PTAB that EVERY invention is then invalid based on their legal standard? There is an 84% chance the big business will invalidate a patent at the PTAB.

Maybe the PTAB was created to support big tech and big business?

What if I “won” at the PTAB? What would be next? My case goes back to the District Court, and we start the process of infringement. Where in all of this would I have saved time and money?

In the future when an inventor files for a patent they should be told this:

- Your patent is most likely 16% valid and you should not fight large companies who infringe on your patent.

- You spent \$25,000 on your patents; you are required to also pay maintenance fees on your patent every 5-years. When you decide to fight an infringer on your patent be prepared to fight for the validity of your patent first. This will cost you at least \$250,000 - \$500,000 and your chances of winning are 16%.
- If your patents survive the PTAB and are valid, then you will have to prepare your legal battle through the District Courts on top of your IPR. This will cost you at least \$5M and can take years.

I served my infringer so I could spend my time and money in District Court. That should be my choice or my right to choose that route as the patent holder. I would have won my case. I would have my patents today.

But I don't.

What I have now is a story that can advocate for change in the system. To inspire you all to take a deeper look into what is happening to inventors and Small Business owners like me. You can decide if what happened to me was fair, correct or the right path for a patent owner.

I cannot change the law, but you can.

I have no faith in the US patent system as it is today. Any new idea or invention I create now and or in the future I will not be applying for a US patent. I advise any colleague or friend the same. I believe our system supports large businesses and is setup up to ruin small business. For what reason and agenda, I may never know.

I strongly advise for you to look at the Bill H.R.5874, Restoring America's Leadership In Innovation Act of 2021. This bill will get rid of the PTAB or can be a start to looking at making necessary change to how the PTAB is affecting inventors like me. There are thousands more like me. Most of them angry, broke, and tired. My voice is all I have now, and I intend to keep telling my story until something changes.